

## **840.0000 TIMBER YIELD TAX**

*See Business Inventory Exemption*

**840.0001 Christmas Trees.** Christmas trees grown in a forest, on a tree farm, or even on property operated by a person in the nursery business are subject to the tax if they are to be severed for sale. C 9/23/76; LTA 12/1/76 (No. 76/184); LTA 4/21/77 (No. 77/65).

**840.0010 Claim for Refund.** A claim for refund must be in writing and must set forth the specific grounds upon which the claim is founded. A request for hearing of the claim must be made if a hearing is desired. The filing of such a claim is a prerequisite to the filing of any legal action in the courts. C 11/28/78.

**840.0030 Export Logs.** An exempt entity, e.g., an Indian logging company, contracting to fell timber on an Indian reservation and to deliver the timber to the purchaser in a foreign country will, in the course of doing so, place the timber in the "export process", with the result that section 9(5) of Article I of the United States Constitution will preclude application of the tax. C 4/23/79.

**840.0040 Harvest Value.** In determining the immediate harvest values of timber, the Board must consider evidence such as the gross proceeds from sales on the stump of similar timber of like quality and character at similar locations or gross proceeds from sales of logs, or of finished products, adjusted to reflect only the portion of such proceeds attributable to value on the stump immediately prior to harvest. "Gross proceeds from sales on the stump" and "value on the stump immediately prior to harvest" include all costs incurred prior to harvest, e.g., cost of access, marking, and preparation of a timber harvest plan, and costs of gaining approval to harvest. Deductions include only costs incurred after severance such as logging, hauling, and scaling expenses. C 10/31/90; C 7/30/93.

**840.0041 Harvest Value.** Harvest values are determined by the Board pursuant to Revenue and Taxation Code section 38109 as interpreted in Property Tax rule 1023 in a manner that makes allowance for age, size, quality, costs of removal, accessibility to point of conversion, market conditions, and other relevant factors. Such values may be modified to reflect changes in timber values resulting from fire, blowdown, ice storm, flood, disease, insect damage, or other causes of damage. There is no statutory authority for altering Board-adopted harvest values because of extraordinary costs of harvest incurred by an individual harvester. C 5/11/78; C 5/2/95.

**840.0045 Harvest Value Modification.** Revenue and Taxation Code section 38204 authorizes the Board to modify immediate harvest value schedules to reflect material changes in such values caused by fire, blowdown, ice storm, flood, insect damage, or other causes, on its own motion or in response to an application from a timber owner.

Upon receipt of a written application for modification which includes a comprehensive statement of the facts on which it is based, the Executive Director will request from the Timber Tax Division a recommendation as to appropriate Board action. Should the recommendation be negative, the matter could be scheduled for a Board hearing at the owner's request. In the event the application is approved, the modified values would apply to all timber actually affected by the calamity in a given harvest value area. C 7/13/77.

**840.0047 Harvesting.** While the term may be defined differently for other purposes, harvesting, for timber yield tax purposes, begins with the cutting of a tree and includes the bucking and hauling of it from the cutting area. C 3/24/77.

**840.0050 Imposition.** Imposition of the tax is not conditioned upon the existence of a timber harvest plan, upon approval or disapproval by the Coastal Commission, or upon any other such contingency. C 11/13/78; C 4/24/80; C 1/12/83.

**840.0051 Imposition.** Revenue and Taxation Code section 38115 imposes the timber yield tax upon, among others, the person who harvests (cuts or fells) timber owned by another. The liability for tax is not conditioned upon removal of the harvested timber. C 3/30/87.

**840.0070 Logging by Indians.** Indians logging timber on Indian reservations are not liable for the tax. Neither are Indian organizations or associations comprised entirely of Indians logging timber on a reservation liable therefor.

An "Indian" is any person of Indian descent who is entitled to receive services as an Indian from the U.S. Department of the Interior. An "Indian organization" includes Indian tribes and tribal organizations, partnerships, all whose members are Indians, and corporations organized under tribal authority and wholly owned by Indians. C 6/29/78.

**840.0080 Measure of Tax.** The sales price received for timber is the measure of the tax only if it coincides with the amount shown on the appropriate harvest value schedule. When enacting the yield tax, the Legislature was aware that timber sales often involve not only cash but also the provision of property improvements, such as roads and bridges. It was decided that to avoid an expensive audit program, the State Board of Equalization would semi-annually establish harvest value schedules based on recent sales, taking into account the age, size, quality, costs of removal, accessibility, and market conditions at the time of the sales. Thus, an amount on a harvest value schedule is a derived average which may be higher or lower than the actual sales price of timber. C 11/2/90.

**840.0090 Payment Under Protest.** The Timber Yield Tax Law contains no provision for payment of taxes under protest. Rather, one paying and contesting the correctness of such taxes must file a claim for refund (Revenue and Taxation Code sections 38601-38607). C 12/12/79.

**840.0100 Proceeds Due a County.** Proceeds from the tax due a county may not be withheld from the county until such time as the county complies with the state law regarding Timberland Preserve zoning. C 12/5/78.

**840.0101 Proceeds Due A County.** The amount paid by the State Board of Equalization to satisfy a court judgment and interest thereon is properly charged to and deducted from timber tax distributions paid by the State Controller to the counties where the taxes were originally collected. C 12/5/90.

**840.0120 Reporting.** In determining quantities of timber for purposes of the timber yield tax, the specified Scribner Decimal C Log Rule is the standard board foot log rule for timber that is measurable by the net board foot method. As white fir timber is typically timber measurable by the net board foot method, it is reportable in MBF. The fact that a taxpayer may contract for the sale or purchase of timber typically measurable by the net board foot method and specify some other method in the contract, such as weight in tons, as the method of measurement/payment is a matter of contract between the taxpayer and the other party. It in no way impacts upon the manner in which quantities of timber for purposes of the timber yield tax are to be determined under Revenue and Taxation Code section 38109 and Property Tax Rule 1022. C 2/4/94.

**840.0130 Shared Harvest Plan.** When two timber owners are sharing one harvest plan, they are required, for purposes of calculating the small total volume deduction, to combine their harvest volumes for each quarter in which they are harvesting from the same assessor's

parcel under one timber harvest plan. The requirements for reporting each harvest separately under one timber harvest plan for purposes of calculating the small total volume deduction are that each timber owner must have a separate timber yield tax account and must separately own the land from which the timber was harvested, as identified by the assessor's parcel number. C 3/19/98.

[840.0139](#) **Timber Advisory Committee.** The Timber Advisory Committee is advisory only and acts as a fact-finding and consulting body in the establishment of timber harvest values. Its members may appoint alternates to sit for them without the permission of the other members, and all members' tenures continue for as long as the Board desires. C 11/21/77.

840.0140 **Timber Owner.** C 11/22/78. (Deleted January 2006)

[840.00141](#) **Timber Owner.** While California Commercial Code sections 2107(2) *Goods (Timber) to be Severed From Realty*, and 2401, *Passing of Title* can be determinative of ownership to taxable timber, they do not control when there is a written agreement specifying the precise time at which title to the timber to be harvested transfers. C 9/20/90.

[840.00142](#) **Timber Owner.** Ownership of timber felled on city-owned land is determined by reference to title provisions contained in contracts entered among the city, the logging company and the ultimate purchaser. Tax should be asserted against the first non-exempt owner regardless of contract terms that hold the seller responsible for the tax. Contract liability provisions cannot supersede statutory liability provisions.

Ownership of timber felled on tax-exempt land may be determined by reference to the requests for harvest bids and the bids themselves. These documents will usually make it clear whether the bidder is contracting to perform a harvesting service or is purchasing standing timber. C 2/21/91.

[840.0143](#) **Timber Owner.** An agreement between a property owner and an excavating company requiring the latter to clear and prepare a site for building, including the removal of specifically marked standing timber, constitutes a present sale of timber before severance and makes the company the timber owner for timber yield tax purposes. C 6/12/87.

[840.0144](#) **Timber Owner.** A surety or guarantor who performs a timber sale contract for the person originally obligated to perform it becomes the timber owner as defined in Revenue and Taxation Code section 38104 for purposes of Revenue and Transportation Code section 38115. As such, it is liable for timber yield taxes applicable to the timber harvested.

The surety must be timely billed, i.e., within three years of the quarter for which tax is determined or within three years after a return is filed, whichever is later, or if no return has been filed, within eight years of the period for which tax is proposed to be determined as provided in section 38417. C 3/10/88.

[840.0145](#) **Timber Owner.** When an exempt governmental entity enters into a contract for the sale of standing timber, the non-exempt buyer obtains title with the right to sever and is the timber owner for timber yield tax purposes. If the contract specifies a date by which the timber must be removed, the ownership of any timber still standing after that date reverts to the governmental entity. C 8/17/83.

[840.0146](#) **Timber Owner.** A timber sale agreement pursuant to which designated standing timber is to be removed by a specified date results in an immediate transfer of the timber to the buyer, with ownership of the timber that is not harvested by the specified date reverting to the seller. As the timber owner, the buyer is responsible for timber yield tax due on the timber harvested. C 6/9/81.

[840.0147](#) **Timber Owner.** The owner of an unpatented mining claim becomes the owner of timber felled on the land to which the claim relates when the timber is felled for use in connection with mining operations, and he is liable for applicable timber yield tax thereon. An operator hired to fell the timber does not obtain any title to timber illegally felled and appropriated to his own use. C 4/10/80.

[840.0148](#) **Timber Owner.** An oral contract for the sale of standing timber, like a written contract, therefore, results in the purchaser becoming the timber owner for timber yield tax purposes, assuming the existence of the contract and its enforceability is demonstrated. C 2/27/87.

[840.0149](#) **Timber Owner.** A purchaser of standing timber is the timber owner for timber yield tax purposes even though the seller agrees in the contract of sale to reimburse the purchaser for timber yield taxes. C 4/10/85.

[840.0150](#) **Timber Owner.** While governmental agencies are normally exempt from property taxes and, therefore, excluded from the definition of "timber owner" contained in Revenue and Taxation Code section 38104, an exception exists when the timber is located on land that is subject to property tax because it is located outside the owning agency's boundaries and was taxable when acquired. C 5/27/77.

[840.0151](#) **Timber Owner.** Revenue and Taxation Code section 38115 states that timber yield tax is imposed on every timber owner who harvests timber or causes it to be harvested. A private agreement between the timber owner and the timber operator to the effect that the timber operator is responsible for all timber yield tax does not supersede the provisions of section 38115 and is not binding on the Board. Thus, the timber owner remains liable for the applicable timber yield tax as the result of such harvesting. C 6/25/98.

[840.0180](#) **Timber Owner Scaling Records.** Government Code section 15618 authorizes the State Board of Equalization and/or its staff to examine timber scaling information in the possession of a timber purchaser. C 2/21/79.

[840.0190](#) **Timber Owner Scaling Reports.** Pursuant to Property Tax Rule 1027, timber volumes harvested on U.S. Forest Service property may be reported upon a basis provided for in the rule or upon a basis approved by the Timber Tax Division prior to the due date of the return. Before allowing the use of a reporting basis other than those in the rule, an investigation should be made to insure the reliability of the proposed basis. The granting of an alternative reporting basis does not constitute a waiver by the State Board of Equalization of its authority to audit the taxpayer or to collect timber yield taxes due and owing when different than the amount(s) reported. C 7/29/86.

[840.0220](#) **Welfare Exemption.** Timber harvested from land exempt from property taxation under the welfare exemption is subject to the tax. Liability for the tax, however, is upon the "first person" acquiring legal title or beneficial title to the timber after it has been felled from land owned by the exempted organization. C 3/31/80.